

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL WEISMILLER and)
DANI WEISMILLER,)
)
Plaintiffs,)
)
v.)
)
NATIONWIDE AFFINITY INSURANCE)
COMPANIES OF AMERICA,)
)
Defendant.)
)
No. 4:13-CV-2484 CAS

ORDER

This matter is before the Court on defendant Nationwide Affinity Insurance Companies of America's ("Nationwide") motion for partial summary judgment. Plaintiffs filed this insurance action against Nationwide in state court after Nationwide denied plaintiffs' claim for hail damage to their roof under their policy of homeowners insurance. Plaintiffs filed this action in two counts: breach of an insurance contract (Count I) and vexatious refusal to pay (Count II). Defendant removed the case to federal court based on the Court's diversity jurisdiction.

On January 13, 2015, Nationwide filed a motion for partial summary judgment on plaintiffs' claim for vexatious refusal to pay. In its motion, Nationwide states plaintiffs cannot prove that Nationwide's refusal to pay was willful and without reasonable cause as it would appear to a prudent person. Nationwide cited the opinions of two separate experts who concluded that the damages to plaintiffs' roof were not caused by a hail storm. (Doc. 17-3).

Plaintiffs did not respond to Nationwide's motion within the time permitted by the case management order. Upon review of the file, the Court ordered plaintiffs to respond to defendant's motion for summary judgment by February 24, 2015 or "the Court will consider defendant's motion

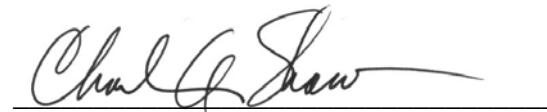
without the benefit of any response from plaintiffs.” (Doc. 18). Plaintiffs have not responded to the motion or to the Court’s Order.

Upon review of Nationwide’s motion, the Court finds partial summary judgment as to plaintiffs’ claim of vexatious refusal to be proper. The material facts are undisputed, Nationwide’s arguments are well founded, and plaintiffs have provided no arguments or evidence to the contrary. Therefore, for the reasons set forth in Nationwide’s Memorandum in Support of Its Motion for Partial Summary Judgment, the Court will enter partial judgment for Nationwide.

Accordingly,

IT IS HEREBY ORDERED that defendant Nationwide Affinity Insurance Companies of America’s Motion for Partial Summary Judgment is **GRANTED**. [Doc. 16]

A Partial Judgment will accompany this Memorandum and Order.



CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 10th day of April, 2015.